

The Honorable Benjamin H. Settle

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

THE GEO GROUP, INC.,

Plaintiff,

v.

JAY R. INSLEE, in his official capacity as
Governor of the State of Washington;
ROBERT W. FERGUSON, in his official
capacity as Attorney General of the State of
Washington,

Defendants.

NO. 3:23-cv-05626-BHS

DEFENDANTS' RESPONSE TO
GEO'S MOTION FOR LEAVE
AND CROSS-MOTION FOR
LEAVE TO FILE UPDATED
NANTO DECLARATION

NOTE ON MOTION CALENDAR:
DECEMBER 8, 2023

DEFENDANTS' RESPONSE TO GEO's
MOTION FOR LEAVE TO FILE AND
CROSS-MOTION FOR LEAVE TO FILE
UPDATED NANTO DECLARATION

NO. 3:23-cv-05626-BHS

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RESPONSE

The State Defendants do not oppose GEO's motion for leave to file an updated Bruce Scott declaration so long as the State may also submit a supplemental Miko Nanto declaration, which provides a more complete description of the Department of Health's (DOH) attempts to inspect GEO's facility. *See* Second Nanto Decl., ¶¶ 12–18. In particular, Ms. Nanto's declaration explains that Mr. Scott twice turned away the DOH inspectors under the guise of ongoing litigation, even though this Court has not issued any preliminary injunction enjoining the State from conducting inspections as authorized under HB 1470, § 3 (now codified at Wash. Rev. Code § 70.395.050). *Id.*

As to GEO's suggestion that DOH's attempted inspections somehow change the standing analysis, GEO is wrong. *See* Dkt. #17 at 15–16; Dkt. #26 at 6–7. As GEO's filing makes clear, DOH has communicated no specific warning or threat to initiate proceedings for violations of HB 1470. *See Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000). DOH simply seeks to conduct inspections to determine if a violation has even occurred and if any action should be taken at all. *See* Second Nanto Decl., ¶ 12.

Moreover, GEO did not allege that DOH's authority to inspect the Northwest ICE Processing Center causes concrete harm sufficient to confer standing for GEO to challenge HB 1470. GEO's complaint takes issue with Sections 2 and 4 of HB 1470. *See, e.g.,* Dkt. #1 ¶¶ 65, 66, 70, 71. But GEO lacks a concrete injury because DOH has not promulgated rules under section 2 and GEO is not under a contract subject to Section 4. *See* Dkt. #17 at 15–16.

Even if GEO had alleged concrete harm as to Section 3's inspection requirements, GEO nowhere indicated that such inspections interfere with its operations or conflict with its obligations under ICE's Performance Based National Detention Standards (PBNDS). Indeed, GEO could not allege concrete harm because the Ninth Circuit has already held that similar state inspections and data collection of immigration facilities “do[] not . . . disturb any federal arrest or detention decision.” *United States v. California*, 921 F.3d 865, 885 (9th Cir. 2019).

1 In sum, DOH's recent attempts to exercise its authority under HB 1470 and inspect
2 GEO's facility does not change the standing analysis or the merits of GEO's claim—there is no
3 harm and there are no Supremacy Clause concerns. This Court should deny GEO's preliminary
4 injunction and grant the State's motion for dismissal.

5 DATED this 4th day of December 2023.

6 ROBERT W. FERGUSON
7 *Attorney General*

8 *s/ Marsha Chien*
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25 *and Attorney General Robert W. Ferguson*

26 I certify that this memorandum contains 416
words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 4th day of December 2023, at Olympia, Washington.

s/ Kelsi Zweifel
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